

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

MARGARET KENNEDY, et al.,

Plaintiffs,

v.

ABB, INC., et al.,

Defendants.

CIVIL ACTION
No. 06-CV-04305

(Judge Nanette K. Laughrey)

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLAIMS
FOR DAMAGES PRE-DATING DECEMBER 29, 2000¹**

Pursuant to the Court's direction during the parties' September 20, 2007 teleconference, Defendants respectfully move to dismiss any claim for damages relating to conduct occurring more than six years before the commencement of this litigation. As set out in the Suggestions of Law in support of this motion, while plaintiffs' original Complaint included an allegation that the statute of limitations should be tolled, plaintiffs have since withdrawn that allegation. Moreover, even if plaintiffs had renewed their tolling allegation in their Amended Complaint, it would be subject to dismissal, because a tolling claim—and any claim for damages pre-dating the maximum six-year statute of limitations period²—cannot be sustained absent particularized allegations of fraudulent concealment that are not present here.

¹ Defendants file the current Motion pursuant to the Court's Order during the September 20, 2007 telephonic hearing. It is filed in addition to the Fidelity Defendants and ABB Defendants separate Motions to Dismiss Plaintiffs' Amended Complaint for Breach of Fiduciary Duty, both filed August 3, 2007, which seek dismissal of plaintiffs' claims in their entirety.

² Defendants reserve for a later date the question whether the plaintiffs possessed "actual knowledge" of the alleged breach such that ERISA's three-year limitation period would bar their claims. The issue here is not the limitations defense, but rather plaintiffs' effort to expand the general limitations period by asserting entitlement to damages pre-dating the six year statutory limit.

WHEREFORE, defendants respectfully request that the Court dismiss any claim
for damages relating to conduct occurring before December 29, 2000.

October 4, 2007

Respectfully submitted,

By: /s/ Stephen D. Brody

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2007, the foregoing was filed and service made by the Court's Electronic Case Filing (ECF) system to:

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